Message

**From:** Deegan, Dave [Deegan.Dave@epa.gov]
**Sent:** 1/4/2021 10:43:14 PM
**To:** R1 Executives All [R1ExecutivesALL@epa.gov]
**Subject:** FW: Daily News Clips 1/4/21

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**From:** Sullivan, Melissa
**Sent:** Monday, January 4, 2021 5:43:11 PM (UTC-05:00) Eastern Time (US & Canada)
**To:** AO OPA OMR CLIPS
**Subject:** Daily News Clips 1/4/21

**Daily News Clips**

January 4, 2021

**Air**

JD Supra: "Ozone/Clean Air Act: U.S. Environmental Protection Agency Final Rule Retaining Current National Ambient Air Quality Standard"
https://www.jdsupra.com/legalnews/ozone-clean-air-act-u-s-environmental-4146075/

WUSF: "EPA Sued For Approving 'Radioactive Roads'

https://wusfnews.wusf.usf.edu/environment/2021-01-04/epa-sued-for-approving-radioactive-roads

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**Air**

JD Supra
"Ozone/Clean Air Act: U.S. Environmental Protection Agency Final Rule Retaining Current National Ambient Air Quality Standard"
Walter Wright
https://www.jdsupra.com/legalnews/ozone-clean-air-act-u-s-environmental-4146075/

The United States Environmental Protection Agency ("EPA") issued a final rule retaining the current National Ambient Air Quality Standard ("NAAQS").

This leaves in place the ozone NAAQS that was promulgated during the Obama Administration in 2015.

The Clean Air Act requires that EPA periodically review each NAAQS to determine, based on evolving science, etc., to determine if it should be revised.

Ozone is an irritant gas. It is not emitted by any particular source and is, therefore, a secondary air pollutant. The air pollutant is formed in the atmosphere in the presence of sunlight and heat from other precursor air pollutants including nitrogen oxide and hydrocarbons. The photochemical reactions can vary because they are initiated by natural conditions such as sunlight and temperature which can, obviously, change. As a result, the rate of formation can differ on an hourly, daily, or seasonal basis.

Ozone was designated many years ago pursuant to the Clean Air Act 108/109 NAAQS review process as a criteria air pollutant. Once an NAAQS is established, the states are required to develop and implement state implementation plans to ensure that its air quality control regions meet the NAAQS. As a result, once EPA has established a NAAQS, each state is required to formulate, subject to EPA approval, State Implementation Plans ("SIPs") designed to achieve each standard. The SIPs will contain the measures and actions the state proposes to undertake to attain each NAAQS.

A change in a NAAQS may require a revision in the SIP. The SIPs and/or revisions must be adopted pursuant to public notice and hearing and include various substantive requirements.

In 2017 EPA noted that Arkansas was in attainment state-wide with the 2015 ozone NAAQS. Crittenden County had previously been designated non-attainment for this NAAQS. However, in 2016 EPA finalized a rule that redesignated Crittenden County as compliant with the ozone NAAQS.

EPA has previously stated that its decision to retain the current NAAQS has been formed by:

> . . . key aspects of the currently available health effects evidence and conclusions contained in the ISA, quantitative exposure/risk analyses and policy evaluations presented in the PA, advice from the CASAC and public input received as part of this ongoing review. The health effects evidence newly available in this review, in conjunction with the full body of evidence critically evaluated in the ISA, continues to support prior conclusions that short-term O3 exposure causes and long-term O3 exposure likely causes respiratory effects, with evidence newly available in this review also indicating a likely causal relationship of short-term O3 with metabolic effects.

EPA states its decision is based on its judgment that the current NAAQS protects the public health, with an adequate margin of safety, including the health of at-risk populations with asthma, and protects the public welfare from adverse effects.

The existing primary and secondary standards, established in 2015, are 0.70 parts per billion as the fourth-highest daily maximum 8-hour concentration, averaged over three consecutive years.

EPA's decision has been and will be a subject of significant debate.

The Environmental Defense Fund states in part in a December 23rd news release:

> Tens of millions of Americans live in an area with unhealthy levels of smog, and today's decision by the Trump administration to leave inadequate protections in place risks their health and well-being.

> The administration is legally required to ensure that our national standards for ground-level ozone pollution are set at a level that protects public health, including a margin of safety for those who are especially vulnerable to smog. . . However, instead of fulfilling his duty, EPA Administrator Andrew Wheeler rushed a decision to maintain our current standards – in spite of a large body of medical and scientific studies showing those standards are outdated and do not adequately protect public health.

The American Chemistry Council in contrast states:

> ACC supports the U.S. Environmental Protection Agency [EPA]'s final rule retaining the primary and secondary ozone NAAQS without revision. EPA's decision reflects the analysis highlighted in the supporting policy and science assessments that the current standards of 70 parts per billion [ppb] provide a 'high level of protection from ozone-related health effects.'
>
> EPA's action appropriately retains today's protective standards while providing regulatory certainty that will enable manufacturers to continue critically-needed production.

A link to the final decision can be found here.

WUSF

"EPA Sued For Approving 'Radioactive Roads'

Jessica Meszaros
https://wusfnews.wusf.usf.edu/environment/2021-01-04/epa-sued-for-approving-radioactive-roads

The Environmental Protection Agency is being sued for approving the use of radioactive waste to build roads.

For about three decades, it's been the position at the EPA that a product called phosphogypsum — a radioactive waste that's left over from creating chemicals used for fertilizer — poses an unreasonable risk to public health if it were put into roads.

The substance produces radon gas, a hazardous air pollutant. It also includes lead, arsenic, and other metals that have been found to have negative health consequences for people and the environment.

But in October, the EPA switched its position and approved phosphogypsum for use in road creation.

Several groups, including ManaSota-88, Healthy Gulf, and the Center for Biological Diversity, are suing the EPA at the U.S. Court of Appeals for the District of Columbia.

**Click here to view the lawsuit.**

"What is the fate of this radioactive material that becomes part of a road when a sinkhole happens? Likewise, we already have roads that are eroding as a consequence of sea level rise and increased storm surge and wave activity all along our coastline on both coasts," said Jaclyn Lopez with the Center for Biological Diversity. "What is the fate of that material once it is washed away?"

Usually this waste material gets put aside in what are called gypsum stacks. The Fertilizer Institute applied to use this by-product in roads, saying it's only economically viable to use phosphogypsum within 200 miles of a stack. That means Florida is at high risk, according to Lopez.

*Center for Biological Diversity*

"Florida has at least 25 phosphogypsum stacks storing about 1 billion tons of radioactive waste of phosphogypsum," she said.

"There are other stacks throughout the United States: there's North Carolina, Mississippi, Louisiana, and a handful out west. But by far, Florida has the densest concentration of these gyp stacks. And where they are located is mostly in west-central Florida, we have a few up north. If you were to layer on top of that a 200-mile radius buffer, you quickly see that it takes up virtually all of Florida."

In addition to the federal lawsuit, the groups also petitioned the EPA to reconsider its decision.

**Click here to view the petition.**

"It's not what Floridians want. They don't want to be living near and driving over radioactive roads. It's as crazy as it sounds," said Lopez.

As of late December, it didn't appear as though phosphogypsum has been used in roads since the EPA approval.

Neither the EPA nor The Fertilizer Institute responded to emails for comment.